IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14199 of 2004

Between:

EX No.15131566-W GNR (S/W) Shaikh Sirajuddin, S/o Rahimuddin,
R/o Ibrahimbagh Village, PO: Golkonda,
Tehsil: Vijaynagar District, Hyderabad.

...PETITIONER

AND

1. The Union of India, The Ministry of Defence,
   Government of India, New Delhi – 110001.

2. The Commanding Officer, 288 Medium Regiment C/O 56 APO.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction, orders or a Writ, more appropriately one in the nature of a Writ of Mandamus directing /declaring the action of the respondents herein "Declare the proceedings of the Summary Court Martial dated 26.12.2003 constituted under the orders of 2nd Respondent as being unreasonable, unjust, and the sentence of "Dismissal from Service" imposed upon the petitioner herein as being extremely disproportionate to the nature of offence alleged and in derogation to the dicta laid down by the Apex Court in 'State [Union of India] Vs Ramsaran' 2004 (1) CRJ 442 [Criminal Appeal No.410 of 1997 Decided on 04.12.2003] and therefore violative of petitioner's fundamental rights guaranteed under Articles 14,16 & 21 of the Constitution of India.

Counsel for the Petitioner: MR.CAPT.K.M.SAXENA

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following:

-

-

ORDER:

The petitioner is a sepoy in Indian Army. He was indicted with the charge of absenting himself without leave at Ambala Cantonment from 23.07.2003 (FN) to 22.08.2003 (FN). The second respondent herein constituted himself as Summary Court-martial in accordance with Section 108 Read with Section 116 of the Army Act, 1950 ('the Act' for brevity). The petitioner pleaded guilty and therefore, after necessary formalities, the second respondent dismissed the petitioner from Indian Army. Assailing the order, dated 26.12.2003, the present Writ Petition is filed.

The main allegation is that the petitioner has exonerating conditions and circumstances in his favour, but the petitioner was forced to record the plea of guilty and without knowing the effect of the same, the petitioner has signed on pre-written word as "guilty". Though the learned counsel for the petitioner, Sri K.M.Saxena strenuously raised various contentions, having regard to Section 164 of the Act, this Court is not inclined to go into these contentions at this juncture. It shall be open to the petitioner to file appeal before the General Officer Commanding (GOC) of sub-area from where he was dismissed from service. Be it recorded that this Court has not expressed any opinion and dismissal of this Writ Petition shall not be construed as dismissing of all the pleas of the petitioner herein. The appellate authority is directed to independently consider all the grounds that may be raised by the petitioner. Two weeks time is granted to the petitioner from the date of receipt of a copy of this order to approach GOC for filing appeal under Section 164 of the Act.

The Writ Petition, with the above observations, is disposed of.

-

-

(V.V.S.RAO, J)

12th August 2004

Note: CC by 16.08.2004

B/O

RRB

Copy To:

1. The Union of India, The Ministry of Defence,
   Government of India, New Delhi – 110001.

2. The Commanding Officer, 288 Medium Regiment C/O 56 APO.

3. Two CD copies.